

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 2.24.25

Bill No: SB 407-280

Sponsor: Wrongful Conviction
Compensation & Services
Short Title: Linda M. Lopez, Antoinette Sedillo
Lopez

Agency Name and Code: 280-LOPD
Number: _____
Person Writing: Kim Chavez Cook
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
n/a	\$9,000	Nonrecurring	general

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: This bill would create the Wrongful Conviction Compensation and Services Act, which provides a process for petitioning a district court for relief if they can show by a preponderance of the evidence that they were convicted and served a sentence for a crime they *did not commit*, if the conviction was pardoned or reversed, and the charge was thereafter either dismissed, acquitted, or a person accepted an “Alford plea” instead of retrial, while maintaining their innocence. The Department of Justice may submit opposition to a petition.

If granted, the court may grant damages awards of the following nature. First, “damages for loss of liberty and pain and suffering” in the following amounts:

- Not less than \$100,000 per year of incarceration awaiting a sentence of death
- Not less than \$75,000 per year of incarceration on any other sentence
- Not less than \$50,000 per year that a released person spent on parole or probation or subject to a requirement to register on the sex offender registry based on the wrongful conviction

The court may also grant various forms of economic damages arising from conviction, including reasonable attorneys fees incurred in getting the conviction overturned or incurred in filing the petition, reimbursement for restitution paid or reintegration and mental health services incurred, as well as other enumerated damages.

The bill provides limitations on entitlement to relief, procedures for awarding damages, including that any award under the Act is to be reduced by any award otherwise received in a civil action for the same wrongful conviction (and vice versa if the civil damages award comes later). It specifies that accepting relief under the Act “does not preclude the petitioner from seeking or obtaining other damages or relief available under the law.”

The bill provides for automatic expungement if the petition is granted, and entitles the petitioner to a formal letter of acknowledgement from the New Mexico Attorney General. The bill would also provide reintegration services for anyone whose conviction is released from incarceration after “the person's conviction is reversed, overturned or vacated, or the person is pardoned,” including a one-time \$2000 stipend to assist their transition; and two years of no-cost support services managed by the health care authority, including housing and

residential services, public assistance, health, vision and dental insurance, food benefits, a medicaid allowance; and utility assistance.

The bill would require all correctional facilities provide qualifying individuals the \$2,000 stipend and the application for ongoing benefits upon release.

The bill would require courts to provide notice of the right to file a petition whenever a conviction is overturned, reversed, or dismissed, acquitted or resolved by Alford plea.

The bill would waive sovereign immunity to damages sought under the Act, and would create a non-reverting compensation fund, to be funded by appropriations, gifts, grants, donations and bequests. The bill would appropriate a non-reverting \$9,000,000 for expenditures beginning in FY 2026.

The effective date of the Act would be July 1, 2025.

FISCAL IMPLICATIONS

This bill could certainly facilitate the mission of the LOPD to minimize harms from the criminal legal system, and in the long run could reduce system involvement, as people who are incarcerated – even wrongly – are more likely to become re-involved in the system after release. Compensating damages and facilitating reentry, including two years of ongoing services, would dramatically reduce that recidivism rate.

LOPD does not have data reflecting appellate or post-conviction reversal resulting in dismissal, acquittal, or an Alford plea. Nor does LOPD have data for wrongful convictions established through the civil DNA testing process, or actual innocence claims established through federal habeas proceedings.

Compensating actual damages through the new fund could reduce civil payouts currently paid by NMCD, county jails, and frequently paid through the Public Liability Fund. Civil litigation to remedy wrongful conviction claims is costly and time consuming to pursue and defend, and increases the burdens placed on the civil court dockets and civil litigation. Because the fund contemplated here covers all damages stemming from wrongful conviction, it could also incentivize pursuing recompense through the new Fund, instead of civil liability suits, which could also reduce the current reliance on civil litigation.

Civil litigation to remedy wrongful convictions relies on establishing fault on the part of someone in the criminal legal system, whereas a wrongful conviction fund is a no-fault system. Compensation is premised on establishing that the conviction and imprisonment was wrongful, without the need to establish that a particular actor violated an established right. Such a system could lessen the burdens on all parties and more efficiently and effectively start to make whole those who have been wrongfully convicted and imprisoned without the need to pinpoint fault.

LOPD has no data reflecting the costs of defending civil litigation related to claims of wrongful

convictions. Analyst notes that, although not necessarily involving actual innocence claims, the time and resources devoted to civil litigation involving LOPD's representation has increased with the passage of the NMCRA. LOPD and its attorneys have traditionally been shielded from liability for legal malpractice related claims based on the immunity in the Public Defender Act, which provides "[n]o attorney assigned or contracted with to perform services under the Indigent Defense Act shall be held liable in any civil action respecting his performance or nonperformance of such services," NMSA § 31-16-10. Recent claims against LOPD under New Mexico's Civil Rights Act (NMCRA) have alleged that LOPD's statutory immunity does not prohibit claims under the NMCRA, a question which has yet to be decided by the Court of Appeals or Supreme Court.

SIGNIFICANT ISSUES

The LOPD supports providing compensation for individuals who experienced actual damage from wrongful arrest, prosecution, and incarceration, and support a path to compensation that does not *require* the expense and delay of civil litigation and does not implicate the budgets of state agencies. New Mexico courts have recognized "incarcerated individuals do not forfeit all constitutional protections by reason of their confinement." *State v. Chacon*, 2018-NMCA-065, ¶ 10, 429 P.3d 347.

The National Registry of Exonerations, a project of several law schools, maintains an extensive database of known exonerations in the United States as well as each state's wrongful conviction compensation program, if any. As of 2025, Thirty-eight states and the District of Columbia have state wrongful conviction compensation statutes. A chart outlining the process in each state is available at:

https://www.law.umich.edu/special/exoneration/Documents/Compensation%20Chart_Version%202024Dec%20%281%29.pdf.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS